

REMARKS

Claims 57 – 100 were pending in the application. By this paper, Applicant has canceled Claims 74 – 100 without prejudice, amended Claims 57, 64 and 68, and added new Claims 101 – 119. Accordingly, Claims 57 – 73 and 101 – 119 are presented for examination herein.

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*Drawings*

Per teleconference between Applicant's attorney and the Examiner on Nov. 25, 2008, the Examiner indicated that the drawings as presently submitted were sufficient for examination purposes (i.e., that the second paragraph on page 3 of the Office Action was not correct).

10 Accordingly, Applicant has not herewith submitted formalized drawings, but will do so subsequently if/when required.

*Specification*

15 Per page 3 of the Office Action, the specification stands objected to as being not in accordance with USPTO guidelines. Applicant has herein amended the specification consistent with the Examiner's suggestions. Accordingly, Applicant believes that Applicant's specification, as amended, is in compliance with all pertinent USPTO guidelines.

*Claims Objections*

20 **Claim 57** – Claim 57 stands objected to because of issues with Applicant's use of the phrases “*adapted to*” and “*a symbol type*”. Applicant has herein amended Claim 57 to address these specific issues identified by the Examiner.

25 **Claim 64** – Claim 64 stands objected to because of the use of the term “*and*” where the Examiner felt the term “*or*” was more appropriate. Applicant has amended Claim 64 consistent with the Examiner's comments.

**Claim 68** – Claim 68 stands objected to because of issues with Applicant's use of the phrases “*adapted to*” and “*a symbol type*”. Applicant has herein amended Claim 68 to address these specific issues brought up by the Examiner.

30 Based on the foregoing, Applicant respectfully submits that all of the claim objections have been overcome herein.

*§112 Rejections*

1. Per page 5 of the Office Action, Claims 57 – 73 each stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response thereto, Applicant provides the following remarks.

**Claims 57 and 68** – With regards to Claim 57, the Examiner asserts in the Office Action that is unclear how the most significant bit and the least significant bit affect the symbol to indicate a symbol type. Further, the Examiner asserts that it is unclear how the reliability of transmitting data increases by only indicating a symbol type. Applicant respectfully traverses the Examiner's rejection. Specifically, per MPEP § 2173.02:

*"The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made."* {emphasis added}

Applicant submits that the particular language asserted to be unclear by the Examiner is in fact sufficiently clear given Applicant's disclosure at, for example, paragraph [0027] of Applicant's specification as filed, which discloses how the MSB and LSB are utilized to indicate a symbol type. In addition, paragraph [0025], among other passages of Applicant's specification as filed, explains how the encoding increases the reliability of the data transmission.

Further, the Examiner seems to be implying that additional discussion may be needed to further clarify how certain conditions of the MSB and LSB affect the symbol type. However, Applicant believes that this is not a requirement under 35 U.S.C. §112, second paragraph, as Applicant notes that the breadth of a claim is not to be equated with indefiniteness. See, e.g., MPEP § 2173.04. Accordingly, Applicant submits that the relevant language of Claim 57 is sufficiently clear so as to be in compliance with the requirements of 35 U.S.C. §112, second paragraph.

Similar logic applies to the Examiner's Section 112 rejection of Claim 68.

§101 Rejections

2. Per page 6 of the Office Action, Claims 68 – 73 each stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In response thereto, Applicant provides the following remarks.

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**Claim 68** – With regards to Claim 68, the Examiner alleges that this claim is non-statutory as it is alleged that the body of the claim is directed towards “*software per se*”. Applicant respectfully traverses the Examiner’s contention. Specifically, Applicant directs the Examiner’s attention to, *inter alia*, paragraph [0026] of Applicant’s specification as filed, which  
10 clearly contemplates embodiments of the invention being implemented in *either hardware or software*. Further, Applicant submits that there is nothing in Applicant’s claimed language which necessitates that the disclosed modules be “*software per se*”. Accordingly, Applicant submits that the Examiner’s rejection is respectfully improper, and Applicant further requests that the 35 U.S.C. § 101 rejection of Claims 68 – 73 be withdrawn.

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§102 Rejections

3. Per page 7 of the Office Action, Claims 57 – 73 each stand rejected under 35 U.S.C. §102 as being anticipated by Brief et al. (U.S. Patent No. 5,875,210, hereinafter “Brief”). In response thereto, Applicant provides the following remarks.

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**Claim 57** – With regards to Claim 57, Applicant respectfully traverses the Examiner’s contention that Brief anticipates Applicant’s Claim 57 invention. Specifically, Applicant has set forth and claimed “*encoding a symbol comprising a plurality of bits, wherein a most significant bit and a least significant bit of said symbol indicate at least a type of said symbol*”. Reasons for  
25 why such a configuration has advantages in increasing the reliability of transmitting data are described at, for example, paragraph [0029] of Applicant’s specification as filed.

Applicant submits that Brief does not teach or suggest a most significant bit and a least significant bit of a symbol indicating at least a type of the symbol. Rather, Applicant submits that Brief appears to possess the same disadvantages of the prior art that Applicant discusses at, *inter*  
30 *alia*, paragraphs [0013] and [0014] of Applicant’s specification as filed, namely e.g. single symbol errors being propagated to two symbol errors during encoding.

In addition, Applicant submits that while Brief teaches indicating a symbol type, this appears to only be accomplished via the use of a single bit as indicated by e.g. Col. 16, lines 15 – 20 of Brief which states:

5       *"The 4B/5B encoder 72 receives pairs of 4-bit symbols (along with the additional bit indicating whether these symbols represent data or control symbols) from configuration switch 12 and converts them into paired 5-bit symbols, which are transmitted to repeat filter and line state generator 76."* {emphasis added}

10       Accordingly, Applicant submits that Claim 57 distinguishes over the teachings of Brief, and therefore respectfully requests withdrawal of the Examiner's anticipation rejection under 35 U.S.C. §102.

15       **Claim 68** – With regards to Claim 68, Applicant respectfully traverses the Examiner's contention that Brief anticipates Applicant's Claim 68 invention. Specifically, Applicant has set forth and claimed *"a first module to encode a symbol comprising a plurality of bits, wherein the first module indicates a type of said symbol by setting or resetting both a most significant bit and a least significant bit of said symbol"*. As previously discussed, such a configuration has advantages in increasing the reliability of transmitting data are described at, for example, 20       paragraph [0029] of Applicant's specification as filed.

Applicant submits that Brief does not teach or suggest a first module indicating a type of symbol by setting or resetting both a most significant bit and a least significant bit of the symbol. Rather, Applicant submits that Brief appears to possess the same disadvantages of the prior art that Applicant discusses at, *inter alia*, paragraphs [0013] and [0014] of Applicant's specification 25       as filed, namely e.g. single symbol errors being propagated to two symbol errors during encoding.

In addition, Applicant submits that while Brief teaches indicating a symbol type, this appears to only be accomplished via the use of a single bit as indicated by e.g. Col. 16, lines 15 – 20 of Brief which states:

30       *"The 4B/5B encoder 72 receives pairs of 4-bit symbols (along with the additional bit indicating whether these symbols represent data or control symbols) from configuration switch 12 and converts them into paired 5-bit symbols, which are transmitted to repeat filter and line state generator 76."* {emphasis added}

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Accordingly, Applicant submits that Claim 68 distinguishes over the teachings of Brief, and therefore respectfully requests withdrawal of the Examiner's anticipation rejection under 35 U.S.C. §102.

5 *New Claims*

By this paper, Applicant has herein added new Claims 101 – 119. Support for these newly added claims is replete throughout Applicant's specification as filed. Accordingly, Applicant submits that no new matter has been added.

10 Applicant submits that new independent Claims 101 and 111 distinguish over the art of record including Brief, as they both require the encoding of symbols such that the most significant bit and least significant bit of each symbol indicate a type of each symbol. Applicant submits that Brief does not teach such functionality as claimed. Accordingly, Applicant respectfully submits that Claims 101 – 119 are in condition for allowance as well.

15 *Other Remarks*

Applicant hereby specifically reserves all rights of appeal (including those under the Pilot Pre-Appeal Brief Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

20 Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

25 Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

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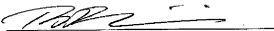
If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES

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